IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

RCRev..No. 330 of 2007()

RCA.166/2003 of V ADDL. DISTRICT COURT, ERNAKULAM
RCP.69/1998 of I ADDL.M.C.,ERNAKULAM
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REVISION PETITIONER/APPELLANT/RESPONDENT:

MANUAL PINHEERA, AGED 53,
S/O.GEORGE, PARTNER, MIANI COLD STORAGE,
ERNAKULAM SOUTH, KOCHI-16.

BY ADV. SRI.A.BALAGOPALAN
SRI.BASIL MATHEW
SRI.SOJO J.KALLIDUKIL

RESPONDENTS: PETITIONERS:
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1. K.P.NARAYANAN NAMBIAR,
AGED 53, S/O.MADHAVAN NAMBIAR,
NARAYANEEYA, CHITTOOR ROAD, ERNAKULAM SOUTH,
KOCHI-16.

2. PREMA NAMBIAR, W/O.K.P.NARAYANAN
NAMBIAR, AGED 51, NARAYANEEYA, CHITTOOR ROAD,
ERNAKULAM SOUTH, KOCHI-16.

BY ADV.SRI.JOHNSON ABRAHAM.

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR
&
T.R.RAMACHANDRAN NAIR, JJ.

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R.C.R.No. 330 of 2007.

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Dated this the 1st day of November, 2007.

O R D E R

Balakrishnan Nair, J.

The tenant is the revision petitioner. Respondents are the landlords. This revision is filed challenging the decision of the Appellate Authority in RCA.No.166/2003 concerning the preliminary point raised under Section 11(1) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act') that the landlords do not have any title to maintain the Rent Control Petition. The brief facts of the case are the following:

2. RCA.No.166/2003 arises from the order in RCP.No.69/1998. The landlords sought eviction under Sections 11(3) and 11(4)(iii) of the Act. Subsequently the claim under Sec.11(3) was withdrawn as the rent control petition was filed before the expiry of one year from the date of Ext.A1 assignment deed under which they got the building. The preliminary objection raised regarding the title of the landlords by the

tenant was rejected by the Rent Controller. The tenant filed RCA.No.166/2003 against the said order. The appeal was dismissed by the Appellate Authority by order dated 11.1.2005. The tenant filed RCR.No.330/2007 against the finding regarding title in the appellate order. Regarding other points, he filed RCR.No.309/2005 .

3. The facts necessary for resolving dispute concerning title are the following:

The landlords are husband and wife. They got the property on the strength of a sale deed Ext.A1 dated 1.11.1997 executed by their mother Devi Menon/Devi Amma. Under a settlement deed the said property was gifted by her in 1987 in favour of her son Mr.Venugopal. She later cancelled the settlement deed in favour of Mr.Venugopal on 30.1.1997. Still later by Ext.A1 dated 1.11.1997 the tenanted building was assigned in favour of the landlords. According to them, Ext.B1 settlement deed never took effect. Mr.Venugopal never got possession of the property. Ext.B1 document was also not received by Mr.Venugopal and so, the settlement deed never took effect in his favour. So, Ext.A1 was validly executed in their favour.

4. The tenant submitted that Ext.B1 deed was produced in

court by Mr.Venugopal through his lawyer which would show that Mr.Venugopal had accepted the gift and so, it took effect. Therefore the cancellation deed is null and void . Therefore, the landlords did not obtain any title at all pursuant to the sale deed Ext.A1. It is also contended by the landlords that Mr.Venugopal has sent more than one lawyer notice instructing the tenant not to pay rent to his mother and to others.

5. The Rent Controller as well as the Appellate Authority considered the aforementioned contentions of the tenant and held that the denial of title is made without any bonafides.

6. Before us, the learned counsel for the revision petitioner pointed out two circumstances in support of the contentions of the tenant that the landlords have no title. The first point is that the lawyer of Mr.Venugopal produced in Court the original of Ext.B1 in 2003. The second point is the recital in Ext.B1 concerning the possession of Mr.Venugopal. Ext.B1 would show that with the execution of the settlement deed, the possession was given to Mr.Venugopal also. In other words thereafter the donor and donee were in joint possession of the building. Apart from the above points the learned counsel for the

revision petitioner took us through the deposition of PW2 including her proof affidavit and the statements made in the cross examination. According to him, when the deposition of PW2 is read as a whole, she indirectly admitted that the deed assigned to Mr.Venugopal took effect. In view of the above circumstances, the learned counsel for the revision petitioner prayed for setting aside the findings on the preliminary point concerning the title and for dismissing the Rent Control Petition. The learned counsel for the landlord on the other hand submitted that the donee Mr.Venugopal never knew about Ext.B1 settlement deed. This is evident from the counter statement filed by the tenant in RCP.No.69/1998. Admittedly, the lawyer notice was issued by Mr.Venugopal in 1997. In that lawyer notice the claim made by Mr.Venugopal is that the mother was not entitled to collect rent. The lawyer notice is not produced by the tenant. The counter statement would show according to Mr.Venugopal the mother was collecting the rent on the strength of power of attorney executed in 1970. So, hereafter the rent should be paid to him as the same is cancelled now. Therefore, she is not entitled to collect the rent. So the learned counsel for the respondents submitted that if Mr.Venugopal was aware of the

settlement deed executed in his favour in 1987 he would definitely mention about it in the lawyer notice issued in the year 1997.

7. The point to be considered is whether the settlement deed executed in the year 1987 took effect or not. Even assuming the version of the landlords is an interested version, we feel that the contents of the lawyer notice of Mr.Venugopal mentioned in the counter statement of the tenant can be safely acted upon. The said statement would positively show that the said Mr.Venugopal was not aware of the settlement deed in his favour executed by his mother. So this material evidence on record will clinch the issue. The landlords have cogently explained how the original of Ext.B1 happen to fall into the hands of Mr.Venugopal, during the trial of the case. We have no doubt in our mind that Mr.Venugopal was not aware of the settlement deed and therefore, there is no question of his accepting it. So, we affirm the finding of the appellate authority that the settlement deed was validly cancelled and the assignment in favour of the landlords is valid and therefore the denial of title is made without any bonafides. In these proceeding Mr.Venugopal is not a party. The finding regarding title made by us is only for the limited purpose of this case. The said finding will not bind

Mr.Venugopal in any dispute between him and the landlords and also the Courts dealing with that dispute.

8. We notice that the above revision is filed only yesterday. There is considerable delay in filing it. Though no limitation is prescribed under Sec.20 of the Kerala Buildings (Lease and Rent Control) Act, the petitioner is bound to explain the delay in filing the appeal, if it is filed beyond 90 days. According to the learned counsel for the landlords, the delay has not been properly explained and therefore, the revision should be dismissed. Since we have held that on merits the revision petitioner has no case, we are not inclined to dismiss the revision on the ground of delay.

In the result, the Rent Control Revision Petition fails and it is dismissed with costs.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

kvs/-